Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Implementation of the Telecommunications Act of 1996	)	CC Docket No. 96-115
Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information	)	

AT&T PETITION FOR RECONSIDERATION AND/OR CLARIFICATION

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SUMMARY

Many of the regulations established in the *CPNI Order* are unnecessary to protect consumers' privacy interests, go beyond any plausible statutory requirement and, ironically, would undermine the procompetitive goals of the 1996 Telecommunications Act by denying to carriers and their customers the ability to consider attractive new offers based on CPNI. Others are intrusive and impose exorbitant, unwarranted costs on carriers without any privacy-enhancing benefit to consumers. These aspects should be promptly reconsidered.

AT&T shows in Part I that that the Commission clearly erred in prohibiting the use of CPNI, absent customer approval, for winback marketing. This rule is not supported by the statutory language and would deny to consumers the very proliferation of choices that competition is intended to make available to them. The comments on the petitions for stay of this rule overwhelmingly confirm the need for prompt action to avoid this anticompetitive effect.

In Part II, AT&T demonstrates that the Commission should lift the prohibition on use of wireless CPNI for marketing of mobile handsets and related information services because it denies to consumers the package of products and services required to use wireless services efficiently. Given the characteristics of mobile handsets and voice mail used with wireless service, they are clearly

part of the service or used in or necessary to the provision of the service within the meaning of Section 222(c)(1).

In Part III, AT&T shows that that the electronic audit trail requirement would impose extraordinary costs on AT&T in the range of *hundreds of millions of dollars* without any offsetting privacy-enhancing benefit for consumers. The Commission's premise that this requirement will discourage casual perusal of customer information and identify CPNI violations is plainly incorrect. In all events, the Commission's objective could be far better achieved by other less costly and regulatory means, including training and supervisory review. Similarly, the Commission should require carriers to develop processes to implement tracking of CPNI approvals rather than invariably imposing a first screen requirement which may not always be practicable due to systems limitations. Although the electronic audit trail requirement is clearly inappropriate and existing safeguards are sufficient, if the Commission believes that some sort of additional compliance mechanism is necessary, it could require carriers to conduct CPNI audits. Unlike an electronic audit trail, the resulting audit report would not compile volumes of useless access data, but would provide specific feedback on compliance and also possible areas of training program improvement.

In Part IV, AT&T shows that the Commission should grandfather existing CPNI approvals obtained in good faith prior to release of the *CPNI Order*. Resoliciting the same

customers for consent would not only require wasteful and unnecessary expense, it would be both confusing and an annoyance for the customer. To assure that these customers receive the detailed notice of rights now required by the *CPNI Order*, prior to relying on their consent, AT&T would send them a full written notice of their rights, including an explanation that they have a right to withdraw their CPNI approval should they wish to do so.

In Part V, AT&T asks the Commission to clarify, at a minimum, that any additional state notification requirement will have prospective application only and will not serve to invalidate CPNI approvals previously and validly obtained (or grandfathered by the FCC). A failure to so hold could put carriers at peril of expending millions of dollars in soliciting customer approval only to find that the notice does not comply with after-the-fact state-imposed notice requirements.

In Part VI, AT&T shows that the Commission should reconsider the *CPNI Order* to impose adequate competitive safeguards on BOC use of CPNI. Failure to do so will make the *CPNI Order* irreconcilable with the plain requirements of Section 272 of the Act, and require appropriate intervention by a reviewing court either in this matter or in the context of a Section 271 application.

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Pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, AT&T Corp. ("AT&T") submits this petition for reconsideration and, alternatively, clarification of the Commission's February 26, 1998 Second Report and Order, governing carriers' use of Customer Proprietary Network Information ("CPNI").[1] Many of the regulations established in the *CPNI Order* are unnecessary to protect consumers' privacy interests, go beyond any plausible statutory requirement and, ironically, would undermine the procompetitive goals of the

[1] Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 98-27, released February 26, 1998 ("*CPNI Order*" and "*Further Notice*," respectively), published in 63 Fed. Reg. 20326 (April 24, 1998).

1996 Telecommunications Act by denying to carriers the right to use CPNI for making competitive offers.[2] Other requirements adopted by the Commission impose exorbitant and unwarranted costs on carriers yet provide no offsetting privacy-enhancing benefit to consumers. In order to better serve consumer welfare, AT&T urges the Commission to reconsider those aspects of its ruling.

I. THE PROHIBITION ON USE OF CPNI FOR WINBACK, ABSENT CUSTOMER APPROVAL, IS ANTICOMPETITIVE AND SHOULD BE RESCINDED.

The Commission clearly erred in prohibiting the use of CPNI, absent customer approval, for marketing once the customer has switched its services to another carrier. *CPNI Order*, para. 85; Section 64.2005(b)(3). Indeed, this prohibition on use of CPNI for winback marketing denies consumers the essential benefits of competition -- increased choice and service innovation -- that the 1996 Act was intended to deliver.

As the submissions on the petitions for stay of this aspect of the *CPNI Order* demonstrated, there is no statutory prohibition on the use of CPNI to win back a customer with whom the carrier had a service relationship, and there is overwhelming consensus that this rule should be rescinded.[3]

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[2] Pub. L. No. 104-104, 110 Stat. 56 (1996), codified at 47 U.S.C. § 151, et seq. ("1996 Act").

[3] Of all the parties commenting on the stay requests, MCI was the only one that supported the prohibition on use of CPNI

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Indeed, Section 222(d)(1) of the Act, properly construed, allows the use of CPNI to initiate and render service, including to a former customer.

Although the Commission's rules expressly permit a carrier to use CPNI to win back a former customer who had given approval for use of CPNI (Section 64.2005(b)(3)), the Commission apparently believes that the implied consent to use CPNI for marketing purposes is somehow revoked when a customer elects service from another carrier. However, a proper reading of the Act would allow carriers to access a former customer's information to regain the customer's business. Certainly, use of CPNI for winback marketing is the hallmark of competition in that carriers would make competing customized offers to the same customer.

Moreover, there is no privacy interest at issue here. The customer previously had a relationship with the

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for winback and then only for incumbent local exchange carriers ("LECs"). *See* MCI Comments, CC Docket No. 96-115, filed May 8, 1998, at 12-15. However, MCI confuses the fact that while discriminatory use of CPNI for winback is independently prohibited by the restrictions in Sections 222(b) and 201(b) of the Act, there is no general prohibition on use of CPNI for winback by any carrier. Thus, a LEC, like any other carrier, is generally permitted to use CPNI for winback purposes. That does not mean, of course, that a LEC could use local CPNI to engage in winback marketing when a CLEC submits an order to convert a customer to its own service. Use of another carrier's order, including a carrier or customer request to lift a PIC freeze, is clearly and *separately* forbidden by Sections 222(b) and 201(b). See *CPNI Order*, para. 85 and n.316.

carrier and the carrier thus had the right to use the customer's telecommunications usage information. There is no reason to believe that the customer would expect this to change. To the contrary, customers would expect their previous carriers to seek to regain their business with even better tailored and more attractive offers.

Use of CPNI for winback is entirely consistent with the Commission's finding that "[m]ost carriers . . . view CPNI as an important asset of their business, and . . . hope to use CPNI as an integral part of their future marketing plans. Indeed, as competition grows and the number of firms competing for consumer attention increases, CPNI becomes a powerful resource for identifying potential customers and tailoring marketing strategies to maximize customer response." *CPNI Order*, para. 22 *(emphasis added)*. This is nowhere more true than in the customer winback arena.

Telecommunications carriers use numerous offers and calling plans to provide consumers customized communications offers that will best meet the consumer's needs. Given the fierce competition in the long distance market, millions of customers change their carrier every month as they try to optimize their telecommunications dollars. It is in the outcome of this competition, the switching of service providers, that the best opportunities arise for the consumer to reap benefits. By using CPNI, carriers are able to design offers that meet the customer's needs and maximize the benefits of competition to the customer's advantage.

To prohibit the use of CPNI for winback purposes, as the Commission has done, denies customers the very proliferation of choices that competition is intended to make available to them.

To better serve consumer welfare and make competition more effective, AT&T strongly urges the Commission to rescind the winback prohibition. Allowing carriers to use CPNI for winback within the category of service (local, long distance and/or wireless) to which the former customer had subscribed is consistent with legitimate customer expectations regarding the use of that information. Moreover, enabling carriers to conduct their marketing activities in an efficient manner would greatly advance the 1996 Act's procompetitive agenda. Consumers would reap the fruits of competition through increased choice, innovative new service offerings, and lower prices, all of which can be attained without compromising or impairing any reasonable privacy interest that a consumer may have in such information.

II. THE PROHIBITION ON THE USE OF WIRELESS CPNI FOR MARKETING OF MOBILE HANDSETS AND RELATED INFORMATION SERVICES SHOULD BE LIFTED.

The Commission should likewise lift its prohibition on carriers using wireless CPNI to market mobile handsets and related information services because it denies to customers the package of services and products needed to use wireless service efficiently. AT&T believes the Commission has

improperly construed the limitations of Section 222(c)(1) in this context.[4]

In particular, as the *CPNI Order* (paras. 24, 35) recognizes, carriers are permitted to use CPNI to market alternative or improved versions of the service from which the CPNI is derived. Converting cellular systems from analog to digital technology increases system capacity and spectrum efficiency and permits carriers to offer a broader array of wireless services and improved security.[5] Clearly, under the *CPNI Order*, carriers are permitted to use wireless customers' CPNI to market digital cellular service, without prior customer approval, because the digital service is an alternative version of the customer's existing subscribed

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[4] Indeed, the Commission acknowledged the possibility that "the public interest would be better served if carriers were able to use CPNI within the framework of the total service approach, in order to market CPE." *CPNI Order*, para. 77.

[5] See In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, 12 FCC Rcd. 11267, 11269-70 (1997) (noting that the conversion of cellular systems from analog to digital technology will facilitate the offering of a broader array of wireless services and help ensure the privacy of cellular calls); Bundling of Cellular Premises Equipment and Cellular Service, 6 FCC Rcd. 1732, 1734 (1991) (recognizing that switching customers to digital cellular service will encourage the use of newer, more spectrum efficient technology); Amendment of Parts 2 and 22 of the Commission's Rules to Permit Liberalization of Technology and Auxiliary Service Offerings, 2 FCC Rcd. 6244, 6245 (1987) (stating that digital technology promises improved spectrum efficiency, reduced equipment cost and size, and secure communications).

service, and therefore such use is permissible under Section 222(c)(1)(a).

To obtain digital service from a particular carrier, the customer not only needs a digital (rather than analog) handset, but also must have the correct type of digital handset because different digital technologies have been adopted by different cellular carriers. The carrier must then activate the handset and program it with unique identification and security codes. Additionally, as CTIA and GTE both pointed out in the stay proceeding, the mobile handset is itself a part of the Title III radio service licensed by the FCC.

Accordingly, a mobile handset is, in effect, a part of the service from which the CPNI is derived or, like inside wire, is necessary to or used in the provision of telecommunications service within the meaning of Section 222(c)(1). *CPNI Order*, para. 79. The Common Carrier Bureau recently clarified that, to the extent that a wireless carrier has already provided the customer with both a mobile handset and wireless service, then both the handset and the service should be viewed as part of the total service that the carrier provides and alternative improved versions of both may be marketed to the customer using CPNI without approval.[6]

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[6] Order, CC Docket No. 96-115, DA 98-971, released May 21, 1998, paras. 6-7. See *CPNI Order*, paras. 21-35, 51, 53-58, 63-66.

However, the Bureau's overly narrow reading fails to acknowledge that a mobile handset is used in or necessary to the service and that carriers should thus be permitted to use CPNI to market mobile handsets to customers transitioning to digital service whether or not they previously supplied the customer with an analog handset.

Likewise, the carrier should be able to market related information services based on CPNI without prior customer approval when these services are offered as part of the total service package, irrespective of whether the customer's prior package included this element. This is consistent with the notion that voice mail allows wireless customers to use their telecommunications service more efficiently by turning off their mobile handsets to conserve battery life, while continuing to receive messages. In this manner, the information service is used in the provision of the wireless telecommunications service.

III. THE ELECTRONIC AUDIT TRAIL REQUIREMENT SHOULD BE ELIMINATED BECAUSE IT IMPOSES ENORMOUS COSTS ON CARRIERS WITHOUT ANY OFFSETTING CONSUMER BENEFIT, AND CARRIERS SHOULD BE PERMITTED FLEXIBILITY TO DEVELOP CPNI CONSENT TRACKING OTHER THAN THE FIRST SCREEN REQUIREMENT.

A. Electronic Audit Trail

The *CPNI Order* requires carriers to maintain an electronic audit mechanism that tracks access to customer accounts and records. The system must record whenever customer records are opened, by whom, and for what purpose. *CPNI Order*, para. 199; Section 64.2009(c). Carriers must then

maintain this audit trail for one year. The Commission erroneously concludes that this requirement, which is described only in the vaguest terms, will not be burdensome because carriers already maintain capabilities to track access for a variety of purposes. Not only would such a system impose extraordinary and entirely unwarranted costs on carriers, but a cost/benefit analysis shows that it is illogical because, despite heavy expenditures, it can be easily circumvented. Moreover, developing an electronic audit mechanism involves the same resources that are currently being employed for the *Year 2000* effort and implicates the same sets of systems. Thus, embarking on the FCC's electronic audit requirement potentially jeopardizes what, by any measure, is a critical, national effort.

Read literally, the FCC's requirement could require an electronic record to be established throughout the *network recording, message rating, bill calculation, bill rendering, and collections processes, as well as operational reporting, maintenance, customer service inquiry, and marketing and sales processes, including when those functions (particularly billing and marketing) are performed by a carrier's agents.* Compliance with this literal requirement would impose exorbitant and unwarranted systems development and operational costs on AT&T, despite the fact that most CPNI is accessed by billing systems interacting with one another and by corporate security systems to detect fraud and abuse.

AT&T handles over 5 billion calls per month. Each call results in a call record that is stored in or accessed by multiple systems. Each call or call record is processed by several times by different families of systems, such as: network recording, message rating, bill calculation, bill render, fraud detection and prevention, customer care, collections, risk management, telemarketing, commissioning, marketing decision support, list generation, and archival back-up systems. Additionally, these systems usually have one or more subsystems to support error processing functions. Many of these accesses are made computer-to-computer without any person looking at the information. Countless millions of accesses to these call records are performed by employees for a myriad of purposes having nothing to do with marketing, including account inquiry, customer care, and provisioning.

Nonetheless, under the electronic audit trail requirement, each system would have to be modified to write out an audit record for each call record that had been opened, noting the date, time, and which computer system and on whose authority this record was accessed. Although other technical approaches, such as creating one large repository to record multiple accesses to the same record, would save storage costs, they would cost significantly more to process the enormous volume of updates. If each call record were accessed on average six times in its life cycle (a conservative estimate) that would require one billion updates per day -- a transaction rate that may not even be technically feasible.

Beyond transaction-level access to this information, the data are often aggregated up to the customer level, such as in list generation systems. On average, AT&T reads through the entire file of 100 million customers five times each day to select a small number of customers to whom to mail or call. That would require tracking those 500 million accesses, each day. A year's worth of these records would be larger than the customer database itself.

AT&T estimates that creating such an electronic audit system would require one-time outlays exceeding $270 million, and ongoing charges would exceed that amount annually. In aggregate, over 400 systems would need to be developed or modified, with the bulk of the effort and 80% of the ongoing expense related to systems where the use of CPNI is permitted without express customer consent, such as message processing and billing. At an average cost of $.75 per customer per month, this is an outlandishly expensive and unjustifiable requirement.

Most fundamentally, the electronic audit trail requirement cannot be justified under a cost-benefit analysis because the costs far outweigh any conceivable consumer privacy or compliance benefit. First, the Commission's rationale for maintaining an elaborate tracking system is premised on the erroneous notion that it will discourage casual perusal of customer records and identify CPNI violations. *CPNI Order*, para. 199. No system can overcome the fact that an individual who seeks to access or use CPNI

for an improper purpose will code the electronic audit trail to reflect a proper use of the information (such as to initiate, render and bill, fraud detection, inbound telemarketing, or marketing within the existing service category). Because the CPNI rules do not constrain carrier use of aggregate information from which individual customer identities have been removed, it is always permissible to access customer databases for carriers to filter out aggregate information.

Expenditures in the *hundreds of millions of dollars* for the electronic audit trail requirement would be counterproductive in that the resulting systems would *not* serve to increase carrier compliance with CPNI requirements, yet at the same time, they would divert substantial resources and decrease operating efficiency, all to detriment of the carrier's customers. For example, a single customer care inquiry may permissibly result in multiple reasons why the carrier's customer service representative would be looking at the account information. All of these purposes would have to be entered into the system, which reduces efficiency and occupies data storage capacity, on the off chance that some time within the next year the customer may question CPNI use.

Indeed, such vast volumes of CPNI access information would be tracked and maintained that the output of the electronic audit trail would likely not be readily useable for any specific customer. For business customers alone, AT&T estimates that upwards of 60 billion log records would be

generated on a monthly basis. Not only could this volume of data easily overwhelm available technology, but even if AT&T were capable of storing and querying such a large volume of data, the costs would be prohibitive. None of this information is ever likely to be helpful to the customer. Instead, it would be extremely expensive to develop and run with no offsetting privacy-enhancing benefit. Moreover, development could be expected to take 2-4 years and could not be accomplished within the 8 months provided by the Commission. In short, the electronic audit trail requirement should be eliminated, particularly given the sufficiency of other safeguards (discussed in Part III.C, below).

B. First Screen

The Commission's new CPNI rules also dictate that CPNI approval flags be conspicuously displayed within a box or comment field or within the first few lines of the computer screen, along with the customer's existing service subscription. *CPNI Order*, para. 198, Section 64.2009(a). The Commission should allow carriers flexibility to use alternative CPNI consent status tracking mechanisms where establishing the first screen requirement is not practicable, if the carrier intends to use CPNI for marketing outside the customer's service subscription category. To the extent that a CPNI database is not used for out-of-category marketing, the Commission should clarify that the first screen requirement does not apply.

Although AT&T expects that it will be able to comply with the first screen requirement for residential customer-facing databases used by customer care associates and telemarketing representatives,[7] this requirement poses a serious problem for AT&T's business markets division, which has in excess of 100 systems accessed by employees in various aspects of sales, marketing and customer care. Due to these multiple systems, developmental costs and resource efforts associated with first screen customer CPNI approval status for these systems are estimated to be $75 million. The Commission should not force AT&T to incur this expense when a viable, more practical option exists.

AT&T suggests that, in these circumstances, an appropriate and more cost-effective alternative to the first screen requirement is a centralized customer consent database, which could be established at a one-time cost of $3.5 million and annual recurring costs of $0.5 million. Under the FCC's first screen requirement, all employees would have to receive first screen notification of customer consent status, no matter the nature or purpose of their data access. However, only those employees in sales, marketing, and

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[7] The underlying database of approvals would be fed on a daily basis into the list generation systems. These systems do not use screens to display individually identifiable information, but a mechanism will nonetheless be developed to track when a customer was selected for a list using CPNI data, and whether that was based on express consent, or using implied consent for same-service marketing.

customer care (to the extent the latter includes selling) need to be aware of customer consent when accessing this data. With proper training, sales, marketing and customer care employees can be instructed to access the customer consent database in those situations where out-of-category sales activity is contemplated. Once they have accessed the customer consent database, with restricted IDs and passwords, they would review the customer's CPNI consent status and proceed appropriately. Thus, in addition to saving the $75 million in development costs, access expense would be avoided for those employees who do not need customer consent status in their work effort, *e.g.*, billing, installation, maintenance. Indeed, in addition to cost savings, such a centralized customer consent database makes sense because many business sales are handled by individual customer account representatives, who are familiar with the customer's telecommunications requirements, and do not rely on an isolated computer screen-based contact for marketing.

C. Adequacy of Existing Safeguards and Audit Proposal

Lifting of the electronic audit trail requirement (and allowing alternatives to the first screen requirement) are all the more compelling because *other* existing compliance mechanisms required by the *CPNI Order* are not only sufficient, but, indeed, are *more effective* to protect customer privacy interests. Most importantly, *training* of personnel, particularly, those who have access to customer account data and use same for marketing and sales purposes is the best

safeguard. *CPNI Order*, para. 198; Section 64.2009(b). AT&T expects to train all employees and vendor representatives who use or control CPNI data on the requirements of the new rules. In addition, formal documentation of supervisory review of outbound marketing campaigns is now being implemented throughout AT&T, in accordance with the *CPNI Order*. *Id.*, para. 200; Section 64.2009(d).

Moreover, all AT&T databases containing customer information are secured by the use of IDs and passwords to ensure that access to CPNI is strictly limited. A unique user profile, with an established layer of privileges, is created for each person who is issued a user ID and password. Passwords expire every 30 days and must be reset. Customer data are transmitted within AT&T over a secure corporate network, and batch data are *encrypted* for transmission to and from vendors outside the AT&T corporate network. And, of course, legal documents require vendors to keep all data secure. Moreover, the AT&T Code of Conduct has been updated to refer specifically to the CPNI rules, and violation of the Code allows AT&T to take disciplinary action, up to and including dismissal, of violators. This conforms to the *CPNI Order*'s requirement that carriers maintain internal disciplinary measures for CPNI violators. *CPNI Order*, para. 198; Section 64.2009(b). Implementation of these requirements, coupled with other existing AT&T safeguards and the corporate officer certification now required by the

Commission, is more than adequate to ensure customer privacy interests are protected. Section 64.2009(e).

In all events, if the Commission believes that some sort of compliance mechanism beyond those described above is needed, then instead of an electronic audit trail, the Commission could require carriers to develop an audit program to ensure that systems are compliant on a sample or functional basis. An actual audit of employees, with emphasis on marketing, sales and customer care employees who have frequent access to CPNI, is much more probative in that such an audit would show whether implemented training programs have been effective.[8] Unlike the electronic audit trail, the resulting audit reports would not compile volumes of useless access data, but would provide specific feedback not only on compliance with the CPNI rules but also possible areas of training program improvement.

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[8] For example, an audit could include periodic random selection of all employees accessing CPNI, with increasingly frequent audits of employees with daily access to CPNI. The employees sampled could maintain an activity log for the audit period (*e.g.*, one day or half day). The auditor would interview the employee about CPNI interactions, and produce an audit of value, making note of any employee deficiencies and recommendations for additional CPNI training for the individual as well as total CPNI training programs. As part of the audit, for example, to test list pulls for a residential customer direct mail program, the mail piece could be pulled to determine which list it came from; the auditor could review the criteria used for the specific list, whether or not CPNI data were used, whether express or implied consents were used, who input the criteria, the total number of names selected, and the AT&T manager who approved the

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IV. THE COMMISSION SHOULD GRANDFATHER EXISTING APPROVALS OBTAINED BY CARRIERS IN GOOD FAITH PRIOR TO RELEASE OF THE CPNI ORDER.

The *CPNI Order* requires a carrier to obtain express written, oral or electronic approval before the carrier may use CPNI to market services outside the existing customer-carrier subscription relationship. *CPNI Order*, para. 32; Section 64.2007(a). A solicitation for approval must be preceded by a detailed notice of rights. *CPNI Order*, paras. 127-40; Section 64.2007(f). To further efficiency and avoid customer confusion, the Commission should clarify that its CPNI rules have prospective application only and that AT&T may continue to rely on the express approvals it obtained from customers, consistent with the provisions of Section 222(c)(1) of the Act, prior to release of the *CPNI Order*.

Before the Commission released its *CPNI Order* more than two years after the 1996 Act was enacted, the only direction regarding the acquisition of approvals under Section 222(c)(1) was in the Act itself which stated that "with the approval of the customer," a carrier could use CPNI for purposes other than set forth in that section. AT&T relied on that statutory provision. Indeed, in the *CPNI Order*, the Commission specifically concluded "that the term 'approval' in Section 222(c)(1) is ambiguous because it could permit a

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program. From there, it would be easy to determine if the proper procedures were followed.

variety of interpretations." *CPNI Order*, para. 87. And, as the Commission acknowledged, "carriers were not required, in most cases, to provide notification of CPNI rights under our pre-existing requirements." *CPNI Order*, para. 136. AT&T acted in good faith in acquiring its pre-*CPNI Order* approvals, relying on a federal statute that, according to the FCC's own findings, was capable of various interpretations. Neither AT&T nor consumers should suffer from that ambiguity so long as AT&T acted reasonably -- as it did -- in acquiring those approvals.

Beginning in May 1996, AT&T's consumer services division set out to obtain CPNI permission from its customers. CPNI approval was solicited verbally, while the customer was on the phone with AT&T in the normal course of business. Scripting was given to customer care associates who respond to inbound calls, as well as to AT&T telemarketing representatives who handle both inbound and outbound contacts. Over the past two years, five different scripts have been used, in an effort to make the request more customer-friendly, that is, easier to understand.[9]

From May 1996 through February 1998, AT&T has asked 27.9 million customers for permission to use their personal

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[9] For example, one the scripts used was the following: "We would like to tell you about other AT&T products and services from time-to-time. To help us do this, may AT&T have your permission to review your account information." See Appendix A (for language of other scripts used).

account information to offer them products and services that may be of interest to them. Overall, 24 million of these customers, or 85.9% gave their approval, while 3.9 million (14.1%) declined to give approval. Although the precise wording of the scripts used by AT&T does not meet the detailed requirements of the subsequent *CPNI Order*, the non-trivial percentage of individuals who said "No" is an extremely strong indication that, consistent with the Commission's objective, customers understood AT&T's explanation, understood their rights and -- where it was given -- consent was informed.

AT&T's statisticians advise that had only 1 in 10,000 customers said No, it would have been too small a percentage to be reliable, and rather than a strong indication of approval, most likely the customers would not have understood the question. In this case, however, there was a very significant portion of the population on each side of the question, such that the Commission can safely conclude that customers really meant what they said. AT&T incurred $70 million in expenses to obtain these approvals and denials, and likely would have to incur at least that amount to resolicit these customers. It would be an incredible waste of resources and *irritating* to customers who had already given consent for AT&T to contact them again for their approval. Thus, cost is not the primary reason AT&T seeks to have these permissions grandfathered.

It is quite apparent that these customers understood the difference between a "Yes" and "No" answer, that their